Arent Fox
1050 Connecticut Avenue, NW
Washington, DC 20036-5339

ORIGINAL

RECEIVED

DOCKET FILE COPY ORIGINAL

JUN 21 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Kathleen L. Franco
Tel: 202/775-5740
Fax: 202/857-6395

June 21, 1993

Donna R. Searcy
Secretary
Federal Communications Commission
Washington, D.C. 20554

Dear Ms. Searcy:

Submitted herewith, on behalf of Inland Bay Cable TV Associates, is a Petition for Reconsideration of the Report and Order in MM Docket 92-266, implementing the new cable rate regulations.

If there are any questions, please contact the undersigned.

Sincerely,

Kathleen L. Franco

Kathleen L. Franco

cc: Mr. Peter Ottmar
Peter Tannenwald, Esquire

No. of Copies rec'd 0+8
List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of	)	
	)	
Implementation of Sections	)	MM Docket 92-266
the Cable Television	)	
Consumer Protection Act of	)	
1992	)	
Rate Regulation	)	

To: The Commission

PETITION FOR RECONSIDERATION

Inland Bay Cable TV Associates ("Inland"), by its attorneys, hereby petitions for reconsideration of the Report and Order

including all broadcast, local origination and satellite channels, is $20.25. By contrast, most adjacent or nearby systems (nearly all of which are operated by major MSO's) charge significantly more for the same service, ranging from $2.00 to $4.00 more for comparable (and in some cases lesser) service. By virtue of operating efficiencies, Inland has been able to raise its rates less than nearby systems, without sacrificing quality of service. Indeed, Inland has received community plaudits for its customer service, popular programming and leadership in providing comprehensive programming alternatives. Neighboring systems, on the other hand, have taken advantage of the deregulation of cable rates since December 30, 1986 and have raised their subscriber rates significantly.

Under the Commission's "rollback" approach, Inland will be required to institute reductions in its rates,[1/] even though it has raised its rates to a lesser degree than its neighboring systems. Moreover, the systems discussed above will, even after the required rollbacks, be permitted to charge rates higher than those of Inland. Here, Inland will be penalized for charging its subscribers modest rates and for not unduly taking advantage of a deregulated environment.

This result is clearly not what Congress intended in passing the 1992 Act. The legislative history of the 1992 Act demonstrates that the purpose of the new rate regulation scheme

---

1/ This rollback could also require Inland to reduce staff to make up for revenue losses caused by rate rollbacks.

is to restrain those cable operators that had been sharply increasing their rates since deregulation in 1986. See H.R. Rep. No. 628, 102d Cong., 2d Sess. 30-33 (1992). According to a General Accounting Office ("GAO") study comparing rates charged one month prior to deregulation to the rates charged on October 1, 1988, monthly rates for the lowest priced basic service had increased 29%, over four times the rate of inflation. Id. at 31. The GAO study also found that basic rates for cable service continued to increase after 1988 at a "rather significant rate." Id. at 32. The FCC found similar results when it analyzed the changes in cable rates since deregulation. The FCC study concluded that between 1986 and 1989, monthly rates for the lowest priced tier of service increased by 36%, and by 38% for the most popular tier of service. Id. at 32-33. A subsequent GAO study released in 1991 revealed that cable operators continued to increase their rates substantially, while at the same time offering less programming in return. Id.

Based on these studies, the House Committee on Energy and Commerce concluded that

> The Committee concurs in the findings of both the FCC and GAO concerning the magnitude of rate increases since passage of the Cable Act. The Committee finds that rate increases imposed by some cable operators are not justified economically and that a minority of cable operators have abused their deregulated status and their market power and have unreasonably raised the rates they charge subscribers. The Committee believes that it is necessary to protect consumers from unreasonable cable rates.

Id. at 33.

Thus, the intent of Congress was to restrain cable operators who have "abused their deregulated status and their market power and have unreasonably raised the rates they charge subscribers." Inland (and perhaps many other small cable operators) clearly does not fall within this category. Quite the contrary, Inland has exercised restraint in raising its rates and has maintained rates below the rates charged by neighboring systems. From 1986 to 1989, Inland increased its rates by a total of 31%, which was 5% to 7% lower than the average rate increases of cable operators during that period, according to the FCC's study discussed above. Moreover, during that period, Inland dramatically expanded its service to subscribers by adding several new and expensive channels to its system, including TNT and the Discovery Channel. Consequently, Inland is not the type of cable operator from which consumers need to be protected.

Inland therefore requests that the Commission not apply any rollback requirements to operators like Inland that have maintained rates well below those of nearby cable systems. Specifically, the Commission should permit the local franchising authority (assuming it has been certified) to apply a "good actor" test under which the authority would examine whether a cable operator has only imposed modest increases, after accounting for inflation, in comparison to the other systems in its area. If after such review the franchising authority concludes that a cable operator has imposed rate increases that are substantially below those of its neighboring systems, the

cable operator should not be required to make further rate reductions. Such action would be entirely consistent with, if not mandated by, the legislative history of the 1992 Act.

Respectfully submitted,

Peter Tannenwald
Kathleen L. Franco
Arent, Fox, Kintner, Plotkin
& Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
202/857-6024 -- 202/775-5740

Counsel for Inland Bay Cable
TV Associates

June 21, 1993